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Metropolitan Transportation Commission  
Public Information Office  
101 Eighth St.  
Oakland, California 94607

July 11, 2013

Re: ABAG's and MTC's *Environmental Impact Report Plan Bay Area Final*

Dear Sirs:

This letter shall serve as notice of my objections to what I believe to be significant errors and omissions in regard to the Association of Bay Area Governments' (ABAG) and Metropolitan Transportation Commission's (MTC) *Environmental Impact Report Plan Bay Area Final* (FEIR), July 2013, State Clearinghouse No. 2012062029.

I became aware of the posting of this document and its attachments to the *One Bay Area* web site, downloaded portions of it, and began reviewing it yesterday, July 10<sup>th</sup>, 2013. Among the first sections I looked for were the ABAG/MTC responses to the two comment letters on the *Draft Environmental Impact Report* and *Draft Plan Bay Area* that I submitted on behalf of Bay Area Citizens and/or myself – and I am very concerned about what I have found or, in one case, **not** found.

These errors and omissions were so remarkable that I asked colleagues to review them to ensure that what I discovered were, in fact, what I believed they were, and I am now informing you of these issues as quickly as possible.

One comment letter had the following as its first two paragraphs:

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"On behalf of Bay Area Citizens, I am pleased to submit: *A Population Forecast – The San Francisco Bay Area*, May 2013, prepared by Beacon Economics, attached.

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"This letter, and *the Beacon Economics report*, shall be included as comments (**emphasis added**) on the Association of Bay Area Governments' (ABAG) and the Metropolitan Transportation Commission's (MTC) *Draft Plan Bay Area (Plan)*, March 2013, and *Environmental Impact Report Plan Bay Area Draft* (DEIR), April 2013, State Clearinghouse No. 2012062029."

This letter proper was an executive summary of the Beacon report and also was used to make connections between the implications of the findings of the Beacon report and other elements of the DEIR and draft *Plan*. The "meat" of the technical analysis and findings were in the expert report that Bay Area Citizens commissioned Beacon to prepare. Yet, despite the very obvious submission of the Beacon report as a comment on the DEIR and draft *Plan*, ***and the explicit notification of ABAG and MTC that the report was to be considered as a comment in my cover letter***, ABAG and MTC elected to banish the Beacon Report to the Appendix section, ***and did not respond to it in any way***. (ABAG/MTC did respond to my cover letter – with one paragraph that did not address any of the technical issues that were raised.)

Based on my admittedly cursory review of the well over one thousand pages of the very poorly indexed appendices with the attachments submitted with comment letters, while there are certain attachments (such as expert resumes of commenters) that clearly do not require responses in and of themselves, there appear to be numerous other documents, submitted as attachments, that ABAG and MTC have appeared to elect to simply treat as non-comments and, therefore, not responded to. I question the propriety of this evidently arbitrary process.

I believe that, under the applicable CEQA laws and regulations, ABAG/MTC are not allowed to select which portions of comments letters that ***they wish to respond to and to ignore those comments which they do not wish to respond to***. I object strongly to this practice.

Even more egregious is the treatment of my second comment letter, which was properly submitted to ABAG and MTC prior to the close of the comment period, ***and for which we have an executed receipt with a time/date of 2:24 p.m. on May 16***, which is simply totally missing from the FEIR – and, obviously, ABAG and MTC did not respond to.

This is totally improper and unallowable. I demand that my comment letter be acknowledged, including in the environmental clearance documentation, and responded to – particularly since, based on my review of the comment that are in the FEIR, many of my comments are unique.

(Note that I had previously submitted, on May 3, comments on the conformity analysis and Transportation Improvement Plan, and that most of the contents of this report were contained in the substantially longer comment letter on the FEIR and *Plan* of May 16. While at least one other commenter attached the May 3 comments to his, there is no response to my May 3 conformity analysis comments in the FEIR.)

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I assume that by proper review of the comment letters submitted, ABAG and MTC will quickly find my "missing" letter and comment on it in a timely manner. I would e-mail it to you but, unfortunately, the letter has several attachments from various sources that require assembly and transmission via e-mail is not feasible. I am not in the Bay Area today to be able to hand submit another hard copy of the letter, so I have made arrangements with my colleague, Peter Singleton, who will submit a copy of the misplaced comment letter to you first thing tomorrow, Friday morning.

Kindly inform me how and when ABAG and MTC intend to respond to these errors and omissions and when the supplemental materials will be posted and available for review. In order

to shorten any delay time, I request that I be informed of this both *via* e-mail and by telephone call to the phone numbers listed in the letterhead.

I also note that ABAG and MTC have elected to redact contact information submitted by commenters such as e-mail addresses, phone numbers, and street addresses. ABAG and MTC state that this has been done to protect the privacy of commenters.

While I do not pretend to be able to speak for commenters, I will note that many of us have submitted our comments on our letterheads, with no expectation of "privacy" – and for the specific reason to make our contact information know to others that may wish to contact us in reference to our comments. I question why ABAG and MTC have elected to impose their privacy protection policies on those of us who had no idea that this would be done and did not ask for it to be done – and I am unable to find any ABAG and/or MTC policy in this regard or anything else that would provide notice to commenters that this information would be redacted.

The problem, obviously, is by ABAG and MTC determining to delete this information, it has made it more difficult for commenters who review the comments of others and want to contact another commenter to find a way to contact that person.

So there is no question about my intentions, I expect that this letter will be included as a comment on the *Plan* and published in the environmental clearance documents, I do not wish my contact information to be redacted, I specifically release ABAG and MTC from any responsibility to "protect" my contact information, and I prohibit ABAG and MTC from redacting this information from any and all submission to them in the future.

I also strongly suggest that, if the agencies intend to continue this practice, that every opportunity be taken to properly notify all potential commenters of its existence at each and every event where it may come into effect and that there be an "opt out" – or, preferably, an "opt in" – opportunity for those who do not want such information redacted.

I am looking forward to your offices taking every possible action to correct these errors and omissions as quickly as possible and reporting such actions to me. If there are any questions, please contact me via e-mail or at the "LAUSD" phone number in my letterhead.

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Sincerely,

*Tom Rubin*

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Tom Rubin

cc: Peter Singleton